

USSN 10/735,071

Page 2

REMARKS

In the official action the Examiner sets forth a three-way election of species requirement, wherein, Examiner groups claims 1-11 into a first group, claims 12-19 into a second group, and claims 20-26 into a third group.

Applicant hereby provisionally elects group I (claims 1-11) for examination in this application, with traverse.

The election requirement made by the Examiner is improper. The M.P.E.P. clearly states that "claims are never species." See M.P.E.P.- §806.04(e). Moreover, "species are always to specifically different embodiments" of an invention. If the Examiner wants to make an election of species requirement, the Examiner is required by the M.P.E.P. to identify different embodiments of an invention as opposed to identifying different claims as the Examiner has done here.

The election requirement issued by the Examiner is improper issue should be withdrawn. If the Examiner really intended to issue a restriction requirement, it is respectfully noted that in order for the Examiner to issue a restriction requirement, that the Examiner must determine that the claims are both independent and distinct. According to the M.P.E.P., distinctness requires that the claims of one group be patentable over a second group. As such, in order for the group I and group II claims to be distinct, the group I claims must be patentable over the group II claims.

Of course, the group one claims and group two claims are not identical to each other, but there are certainly certain similarities. The fact that the classes and subclasses which the Examiner might principally search for the two groups of claims are different should not be determinative of this matter since normally examiners search a number of classes and a number of subclasses for any particular invention and the applicant would not be too surprised if the Examiner searched the classes and subclasses associated with the group two claims when searching the group one claims and vice versa. As such, the tests set forth in the MPEP for whether a restriction requirement is proper, is based upon independence and distinctness.

USSN 10/735,071

Page 3

The applicant traverses the restriction requirement (if that is what was intended) since the Examiner did not test the groups and claims identified in this official action for independence and distinctness as required by the M.P.E.P. Simply asserting that the primary areas of search fall into different classes and subclasses, it is submitted, with all due respect, is not proper grounds for making a restriction requirement.

If the Examiner refuses to withdraw the restriction requirement that means that the Examiner is taking the position that the group I claims are patentable over the group II claims. Of course, the applicant will expect the Examiner to maintain a consistent view with respect to patentability of the claims when the Examiner starts examining the claims in this application and potentially rejects claims based upon the prior art.

Reconsideration of this application is respectfully requested.

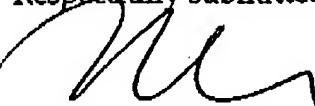
I hereby certify that this correspondence is being facsimile transmitted to the United States Patent Office, fax no. (571) 273-8300, on December 28, 2005

Susan Papp
(Name of Person Signing)

Susan Papp
(Signature)

12/28/05
(Date)

Respectfully submitted,


Richard P. Berg
Attorney for Applicants
Reg. No. 28,145
LADAS & PARRY
5670 Wilshire Boulevard
Los Angeles, California
(323) 934-2300